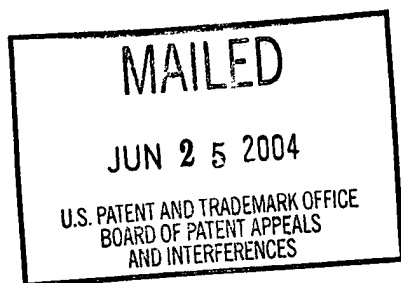


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte HUGH G. LOEBNER

Appeal No. 2004-0832
Application No. 09/684,658

HEARD: June 10, 2004

Before FRANKFORT, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claim 1.

Claims 2 to 4 have been canceled. Claims 5 to 7 are pending.¹

We AFFIRM.

¹ Claims 5 to 7 were amended subsequent to the final rejection and the rejections of claims 5 to 7 made in the final rejection were withdrawn by the examiner in the answer (p.2). We note that this amendment after final rejection has not been clerically entered.

BACKGROUND

The appellant's invention relates to crowd control portable stanchion posts. Crowd control stanchions are portable post assemblies used by maintenance and other individuals to regulate pedestrian traffic. The stanchions are placed in a manner to indicate to pedestrians where the pedestrians should walk or queue (specification, p. 1).

Claim 1 reads as follows:

An extendible guidance tape crowd control stanchion comprising (a) a base, (b) a post attached to said base, (c) a fixed top block assembly attached to said post, said top block assembly comprising a plurality of rollers, (d) a movable bottom block assembly contained within said post, said bottom block assembly comprising a plurality of rollers and a weight, (e) an extendible and retractable guidance tape laced between said top block assembly and said bottom block assembly, said guidance tape comprising a tape and means for attaching said tape.

Claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over EP 0 375 580 A1 to Heitzman et al. (Heitzman)² in view of US 6,349,503 B1 to Gompertz et al. (Gompertz).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 12, mailed April 4, 2003) for the examiner's complete reasoning in support

² In determining the teachings of Heitzman, we will rely on the translation provided by the USPTO.

of the rejection, and to the brief (Paper No. 9, filed October 21, 2002) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claim 1, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Heitzman's invention is directed to a safety device for pedestrian crossings. The safety device is composed of two identical components 1 on either side of the roadway. As shown in Figure 1, each component 1 is formed by a support post 2 which is suitable for arranging a signaling strip 4 mounted in an autoretractable manner and which supports, advantageously at a height of 2 to 10 meters, a holder 3 for guiding the strip. The two strips 4, drawn across the roadway, each extend, as a result of the height arrangement of their guide holders 3, in a descending line, the pair of strips thus appearing to motorists as a signaling cross which is visible from a distance. An operating arm 5 is mounted at the free end of each strip 4 by means of tear-away safety assemblies. A guidance device provided on the lower part of the support post 2 allows

return of the strip 4 along the sidewalk to prevent passage of pedestrians wishing to cross.

As shown in Figure 1, Heitzman's signaling strip 4 is connected by one of its ends to an anchorage 8 provided in the holder 3. The holder 3 is provided with at least one roller 9 for return of the strip 4 and with two guide rollers 10 for the strip 4 in the direction of its exit from the holder 3 through a slit. In addition, the signaling strip 4 works with a movable carrier 12 that serves as a counterweight and that can be provided with additional loads 13 that are connected by screws or hooks to supports of a corresponding shape of the carrier 12, whose vertical wing is provided with at least one roller 14 for installation of the carrier on at least one loop of the strip 4. The additional loads 13, secured in the known manner to the carrier 12, are intended to be used for adjustment of the weight of the carrier 12 in order to control the return as a function of the length of the strip 4, its constituent material, the number of strands that it has, and the user. Moreover, the control of the carrier 12 weight allows one to influence the return speed of the strip 4, which should not be too fast nor too slow, in order to beneficially affect the behavior of the passenger vehicle drivers.

Gompertz's invention relates to the field of gates and mechanical barriers (e.g., a chain gate which stretches across a driveway in order to block the travel of unwanted

persons or vehicular traffic onto that driveway) which prevent passage through an opening. More specifically, his invention relates to the field of gates and mechanical barriers which are opened and closed by electric motors, compressed fluids or gases.

Figure 1 is a side view of one embodiment of Gompertz's barrier mechanism. In this embodiment a rigid modular frame structure holds and separates a hydraulic cylinder 20, an internal chain 24, a lower roller or sprocket 31, a second chain member 50, a traveling roller assembly 52 having a traveling roller 54, second chain member fastening coupling pin 56, an upper external pulley 32 and an external chain 34 which can be a continuation of the internal chain 50. When the hydraulic cylinder 20 is activated or extended it releases the tension on the internal chain 24. The internal chain 24 then wraps around the lower roller or sprocket 31 and travels up to the traveling roller assembly 52. The traveling roller assembly 52 controls and guides the ingress and egress of the second chain member 50 over the traveling roller 54 and the external pulley 32 as the traveling roller assembly 52 is pulled in or released out by the internal chain 24 which is controlled by the direction of the cylinder rod of the cylinder 20 and determines the travel of the external flexible material 34.

Gompertz teaches (column 5, line 58, to column 6, line 15) that:

Various other embodiments are possible within the spirit and scope of the present invention. For example, extending the length of chain or flexible material

that stretches across an opening or extending the height of the posts and top chain (or flexible material) can be achieved by a rearrangement of the internal mechanism or by using a longer cylinder and rods. One such embodiment (FIG. 4) could be configured by attaching said cylinder 20 to the bottom plate rather than the top plate, and mounting two rollers 54 or sprockets on the end of the cylinder rod accompanied by one roller or sprocket on the bottom of the top plate effectively doubles, or in other alternative embodiments of the same idea, quadruples the amount or length of chain per distance of the cylinder rod stroke that can be released. This allows a longer barricade length using the same (or less) stroke of the cylinder rod. Conversely, by using a shorter stroke, a lower post (or column [sic, column], etc.) can effectively barricade the same length. Then, by adding additional pulleys, rollers or sprockets, this shorter post or column can once again be able to span a barrier length provided by the original post height. For example, a six or seven or eight foot high netting across a roll up door opening is possible by changing the stroke, adding some pulleys, and using cable as the internal and top flexible materials 24, 34, & 50.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Heitzman and claim 1, it is our opinion that the only difference is the limitation that the movable bottom block assembly includes a plurality of rollers.

With regard to this difference, in applying the test for obviousness³, we conclude that it would have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Heitzman's barrier mechanism by mounting two rollers 14 on movable carrier 12 instead on only one roller 14 and mounting an additional roller 9 in the holder to effectively double the amount or length of chain per distance of the movable carrier 12 stroke that can be released as suggested by the above-noted teachings of Gompertz as well as Heitzman's specific teaching that the holder 3 is provided with at least one roller 9 and that the movable carrier 12 is provided with at least one roller 14.⁴

The appellant's argument presented in the brief (pp. 7-8) that the subject matter of claim 1 would not have been obvious under 35 U.S.C. § 103 is not persuasive for the reasons set forth above.

³ The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

⁴ In our view, Heitzman's teaching that the holder 3 is provided with **at least** one roller 9 and that the movable carrier 12 is provided with **at least** one roller 14 would have suggested to a person of ordinary skill in the art the provision of two rollers 9 and two rollers 14.

The appellant further argues that Gompertz is non-analogous art. We do not agree. The test for non-analogous art is first whether the art is within the field of the inventor's endeavor and, if not, whether it is reasonably pertinent to the problem with which the inventor was involved. In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979): A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it logically would have commended itself to an inventor's attention in considering his problem because of the matter with which it deals. In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). In the present instance, we are informed by the appellant's originally filed specification that the invention is particularly directed to the guidance of a tape used in a crowd control stanchion. Gompertz teaches guidance of a barrier chain used to prevent or permit passage through an opening and thus, in our view, falls at least into the latter category of the Wood test, and logically would have commended itself to an artisan's attention in considering the appellant's problem. Thus, we conclude that Gompertz is analogous art.


For the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 103 is affirmed.

To summarize, the decision of the examiner to reject claim 1 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

Charles E. Frankfort
CHARLES E. FRANKFORT
Administrative Patent Judge


JOHN P. McQUADE
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge

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